

Income Tax Domicile

Overview and Update

December 3, 2019

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Utah State Tax Commission

Why Does Domicile Matter?

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If a Person has Utah Domicile



that person is a Utah Resident

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If a Person has Utah Domicile



that person is a Utah Resident

If a Person is a Utah Resident



that person is generally taxed on their worldwide income
subject to a credit for taxes imposed by another state

Why Does Domicile Matter?

If a Person is **not** a Utah Resident:

They are generally only taxed on income from Utah sources.



Common Law v. Utah Statute

Common Law: An individual may have more than one residence, but can have only one domicile.

See de la Rosa v. Dep't of Rev., 832 P.2d 1228 (Or. 1992).



Only one
domicile

Common Law v. Utah Statute

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See de la Rosa v. Dep't of Rev., 832 P.2d 1228 (Or. 1992).

Under Utah domicile laws, it is possible that Utah and another state could both assert that an individual has domicile in both states simultaneously.

Domicile Landscape

Common Law: An individual may have more than one residence, but can have only one domicile.

See de la Rosa v. Dep't of Rev., 832 P.2d 1228 (Or. 1992).

Under Utah domicile laws, it is possible that Utah and another state could both assert that an individual has domicile in both states simultaneously.

Example: Couple moves to Texas but wife votes in Utah election and has not registered to vote in Texas. Couple is presumed to be domiciled in Utah.

Why does domicile matter to counties?

1. Counties have duties under Utah domicile provisions
2. Counties can help enforce the law by ensuring that the primary residential exemption is claimed properly
3. Counties can help enforce the law by keeping voting records up to date



How is Domicile
determined?

How Is Domicile Determined?

Domicile Hierarchy:

Tier 1: Automatic Domicile



Tier 2: Rebuttable Presumption of Domicile



Tier 3: “Facts and Circumstances” Test

Utah Code Ann. Sec. 59-10-136

How Is Domicile Determined?

Domicile Exceptions:

1. 761 Day Exception

- Individual and spouse absent from Utah 761 days or more and meet certain other requirements
- Applies infrequently

2. Spouse exception **STARTING 2018** - Spouse not considered to have domicile under Tier 2 or 3 if:

- Does not own property in Utah;
- Does not return to Utah for more than 30 days in a calendar year;
- Has not received earned income in Utah;
- Has not voted in Utah; and
- Does not have a Utah driver license

How Is Domicile Determined?

First question:

Does the individual have a spouse? Yes, if:

- Not legally separated or divorced
- Not file married filing separately on federal income tax return

Why does this matter:

Under Utah domicile law, an action of one spouse can result in both spouses having domicile in Utah under any of the tiers.

Example: One spouse claims a primary residential exemption on property owned in Utah. Both spouses are presumed to have Utah domicile.

How Is Domicile Determined?

Tier 1

Automatic domicile:

1. Dependent enrolled in a Utah public school; or
2. Individual or spouse resident student at a Utah public college or university

How Is Domicile Determined?

Tier 2

Rebuttable Presumption of Domicile:

1. claims a primary residential property tax exemption (not for tenant);
2. is registered to vote in Utah; or
STARTING 2018: Votes in Utah, and is not registered to vote in another state
1. asserts residency on a state income tax return

How Is Domicile Determined?

Tier 3

Facts and Circumstances Test:

1. Applies if domicile is not established under Tier 1 or Tier 2
2. Only the facts and circumstances listed in statute are considered

How Is Domicile Determined?

Tier 3

Facts and circumstances considered:

1. **Driver license** in the state
2. Dependent **resident college student**
3. **Living accommodations** in Utah v. another state
4. Presence **spouse/dependent in Utah**
5. Physical **location of earned income**
6. Location of **vehicle registration**
7. **Membership** in church, club, or similar organization
8. **Address** on mail, phone listing, etc.
9. **Address** on state or federal **tax return**
10. **Assertion of residency** on certain documents
11. Failure to obtain certain **permits or licenses**
12. **Noncustodial parent** of **child in public school K-12**

How Is Domicile Determined?

Tier 3

Additional Facts and Circumstances **STARTING 2018:**

13. (a) maintains a place of abode in the state; **AND**
(b) spends 183 days or more of the taxable year in the state
14. (a) did not vote in Utah during the taxable year but did vote in Utah during any of the 3 prior taxable years; **AND**
(b) did not register to vote in another state during the taxable year

Domicile Factors Most Relevant to Counties

Tier 2 Rebuttable Presumptions for:

1. claiming a primary residential property tax exemption (not for tenant);
2. Utah voter registration; or
STARTING 2018: Voting in Utah, and not being registered to vote in another state

Primary Residential Exemption

When does the presumption arise?

2 requirements must be met

1. Exemption “claimed” on Utah home
2. Utah home must be “primary residence” of individual or spouse

Primary Residential Exemption

How is a primary residential exemption “claimed” on a Utah home?

1. For a county that does not require an application before a property receives the exemption, simply receiving the exemption is enough
2. For a county that requires an application to receive the exemption, receiving the exemption after completing the application is required

Requiring an application is optional under statute

Primary Residential Exemption

When is a home a primary residence?

A home is a primary residence unless one of both of the property owners take affirmative steps to:

- 1. file a written statement to **notify the county** that the property owner no longer qualifies to receive the exemption; AND**
- 2. **check a box on the state income tax return** indicating that the property owner no longer qualifies to receive the exemption**

Primary Residential Exemption

If the primary residential exemption presumption arises, an individual/spouse is presumed to have domicile in Utah unless the presumption is rebutted

Statute does not provide grounds for rebuttal

How is the presumption rebutted?

The Commission looks to actions or inactions related to the specific factor described in the presumption to determine whether the presumption is rebutted

Primary Residential Exemption

Examples of when the primary residential exemption presumption **is rebutted**:

1. Property owner asked the county to remove the exemption and the county failed to do so
2. Property owner checked the box on a state income tax return
3. Vacant home listed for sale
4. Vacant home listed for rent as primary residence
5. Home under construction will be primary residence
6. Other rebuttals could be found in the future

Primary Residential Exemption

Examples of when the primary residential exemption presumption **is not rebutted**:

1. Individual has never heard of the primary residential exemption
2. Individual did not know they were receiving the primary residential exemption
3. Individual did not realize what they were signing when they signed an application to receive the exemption
4. Individual takes “corrective action” to remove the exemption after an audit has commenced
5. Individual attempts to rebut using actions or inactions unrelated to the specific factor being rebutted
6. Law is unfair

Voter Registration/Voting Presumption

If the voter registration/voting presumption arises, an individual/spouse is presumed to have domicile in Utah unless the presumption is rebutted

Statute does not provide grounds for rebuttal

How is the presumption rebutted?

The Commission looks to actions or inactions related to the specific factor described in the presumption to determine whether the presumption is rebutted

Voter Registration/Voting Presumption

The Commission has not yet issued a decision interpreting when the actual voting presumption, which takes effect beginning in 2018, may be rebutted

All grounds for rebuttal currently involve only the voting registration presumption

Voter Registration/Voting Presumption

Examples of when the voter registration presumption **is or may possibly be rebutted**:

1. Showing that the individual registered to vote in another state shortly after moving there
2. Individual requested removal from voter registry and county clerk/other official failed to do so
3. Voting laws provide for name removal from the voter registry and county clerk does not immediately do so
4. Individual moves to a state that doesn't require voter registration and votes in that state
5. Other rebuttals could be found in the future

Voter Registration/Voting Presumption

Examples of when the voter registration presumption **is not rebutted**:

1. Not voting during the tax year at issue
2. Individual attempts to rebut using actions or inactions unrelated to the specific factor being rebutted
3. Law is unfair

How Can a County Help Enforce the Law?

Ensure that the primary residential exemption is claimed properly by:

- 1. Removing primary residential exemption if:**
 - Owner asks for removal
 - County receives report from USTC (April/October) showing individual indicated on an income tax return that they do not qualify for exemption
 - County finds property does not qualify for exemption
- 2. Confirming that property claimed as vacant and listed for sale or rent as a primary residence qualifies for exemption**
- 3. Determining whether property under construction qualifies for exemption**

How Can a County Help Enforce the Law?

Keep voting records up to date by:

- 1. Timely removing an individual's name from the voter registry if the individual requests name removal**
- 2. Immediately removing an individual's name from the voter registry if state voting law provides for name removal**
- 3. Understanding and complying with state voting laws**
- 4. Asking the Lieutenant Governor's office if you have questions about voting laws: 801-538-1041**

Primary Residence Declaration

(One Time Requirement)

59-2-103.5(8)(a)

On or before May 1, 2020 each county assessor shall:

1. notify each residential property owner that a written declaration of primary residence is required within 30 days;
AND
2. provide the owner(s) with the necessary form.

Primary Residence Declaration (FAQ)

Does this apply to all counties?

No, under 59-2-103.5(8)(i) the notification requirement does not apply to a county assessor in a county that had in place **AND** enforced an ordinance requiring the application for primary exemption described in 59-2-103.5(1) for 5 calendar years prior to 2019.

Primary Residence Declaration (FAQ)

What method should be used to notify property owners?

The statute does not specify the method of notification. However, considering the consequences for failing to file the declaration, county assessors should choose a method reasonably expected to provide actual notice.

Primary Residence Declaration

(Ongoing Requirement)

59-2-103.5(8)(d)

Effective Now

Within 5 business days of any change in ownership interest to residential property, the new owner must certify:

1. whether the property is residential property or part-year residential property;
2. Whether the property receives a residential exemption;
3. Whether the owner owns other property in the state that receives the residential exemption.

Primary Residence Declaration (FAQ)

How will new owners know that they must file a certification within 5 days?

County assessors should consider partnering with title companies to have this form included with closing documents. Explain to title companies the value this service will provide their clients.

Consult with title companies to determine a convenient method for them to submit the completed declaration.

Primary Residence Declaration (FAQ)

Can owners/title companies file the declaration electronically?

Yes, the only filing requirements specified in statute is that the declaration must be “written” and “signed.”

Utah Code §46-4-201

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

Primary Residence Declaration (FAQ)

What if an owner fails to file the declaration?

The county assessor must send another notice and allow 30 days for response.

County assessors should consider sending this notice using a different method than the previous notice to increase the chances of reaching the owner.

This notice should be very clear that it is the **FINAL NOTICE** and the consequences of failure to respond.

Primary Residence Declaration (FAQ)

What if the declaration has errors?

If the declaration has an error that makes it impossible to determine whether the property qualifies for the residential exemption, the assessor should contact the owner to correct the error.

Primary Residence Declaration (FAQ)

What if the declaration is unsigned?

If the declaration is not signed by **all owners**, the declaration does not meet statutory requirements.* The assessor should contact the owner(s) of record to obtain necessary signatures.

Failure to have **all owners** sign the declaration may result in significant issues in determining income tax domicile for non-signing owners.

*see: 59-2-103.5(8)(e)(ii) and model forms PT-19A & PT-19B.

Primary Residence Declaration (FAQ)

If the owner fails to file a declaration, is it required for the assessor to remove the residential exemption?

Yes, filing the declaration is a statutory requirement of receiving the primary residential exemption. Failure to file the declaration automatically disqualifies the owner from receiving the exemption in the calendar year.

Primary Residence Declaration (FAQ)

What should owners do if they have been disqualified from receiving the exemption?

If an owner believes they qualify for the exemption after it has been removed for failure to file the declaration, the owner may file an application for reinstatement of the exemption with the county BOE.

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